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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 1st April, 2019

+ CRL.A. 738/2002

SIKKAN

..... Appellant

Through: Mr. A.T.M. Rangaramanujam,
Sr. Adv. with Ms. Anu Gupta,
Mr. Pratyush Raj & Ms. Gouri
Mohanti, Advs.

versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT(ORAL)

1. Mithilesh, daughter of Munesh (PW-10), was married to Rakesh Kumar @ Bobby (A-1), he being the son of Mange Ram (A-2) and Sona Devi (A-3), all of them indisputably being residents of *Jhuggi* no. 244/173, Balmiki Camp, East of Kailash, New Delhi, falling within the jurisdiction of police station Lajpat Nagar. There is sufficient evidence available on record to show, and it is not disputed, that Mithilesh gave birth to a son ten months after the marriage, the said child having later died. The incident which became the subject-matter of the sessions

case in which the judgment that is impugned herein was rendered, occurred on 07.11.1999 at about 8.30 p.m. in the aforesaid jhuggi of A-1, A-2 and A-3. It was the day of the *Deepawali* festival. There is evidence available that Mithilesh suffered burn injuries, opined to be 100 %, she being discovered in such state by two neighbours viz. Babu Lal (PW-1) and Anil (PW-2). The door of the jhuggi required to be broken open, to put out the fire and take Mithilesh to the hospital. Mithilesh died in the hospital sometime around 11.30 p.m. on 08.11.1999, she not being able to make any statement before Sub-Divisional Magistrate (SDM) Mr. Rajesh Kumar (PW-15).

2. Though there was some evidence gathered and presented before the trial court indicating that a statement (Ex.PW-12/B) had been given by the victim (Mithilesh) to Head Constable Surender Mohan (PW-12) in the presence of two doctors attending on her in the hospital, it indicating the fire incident to be accidental, such theory was rejected by the trial court.

3. The case against the afore-mentioned three persons (A-1 to A-3) and two others namely Samay Singh (A-4) and appellant Sikkan (A-5) was founded essentially on the statement of Munesh (PW-10) and Sheela (PW-13), the father and mother respectively of the deceased, on the premise that the deceased had been subjected to cruelty for dowry in the matrimonial home, the appellant herein also being privy to and complicit in the said cruelty, he being the mediator through whom the marriage had been arranged.

4. The death of Mithilesh undoubtedly occurred due to unnatural circumstances within seven years of her marriage with A-1. The charge against the afore-mentioned five persons was brought on the strength of presumption under Section 113-B of the Indian Evidence Act, 1872, the trial having been held in the court of sessions for offences under Sections 498A/304 B/34 of Indian Penal Code, 1860 (IPC).

5. The additional sessions judge, by his judgment dated 26.08.2002, held all the five persons mentioned earlier guilty as charged. By order dated 04.09.2002, A-1 was sentenced to ten years imprisonment on the charge under Section 304 B IPC, the others were awarded imprisonment for seven years for offence under Section 304 B IPC. Each of them was awarded imprisonment for two years with fine of Rs.500/- for offence under Section 498A IPC.

6. The co-convict Samay Singh had filed criminal appeal no. 739/2002. A-3 Sona Devi, on the other hand, filed her own independent appeal (Crl. Appeal no. 972/2002), while A-1 Rakesh @ Bobby and A-2 Mange Ram filed separate joint appeal (Crl. Appeal No. 421/2003).

7. A-3 Sona Devi and A-4 Samay Singh died before their appeals could be heard. The said appeals were, thus, found to have abated and the proceedings therein were closed by orders dated 18.02.2015 and 12.02.2019 respectively.

8. The criminal appeal no. 421/2003 jointly filed by A-1 Rakesh Kumar @ Bobby and A-2 Mange Ram was decided by common judgment dated 08.05.2014. The copy of the said judgment dated 08.05.2014 reflects that the learned single judge dealing with the said part of the case found substance in the contentions of A-2 Mange Ram that there was no evidence showing his involvement in cruelty for dowry. In this view, the conviction in his case was modified, he being held guilty and convicted on the charge for offence under Section 306 IPC, his sentence having been suitably modified on that account. The sentence of A-1 Rakesh @ Bobby was reduced by said very judgment, to the period of detention already undergone, the jail having reported that he had served the minimum period of incarceration prescribed in law.

9. Thus, the matter survives only *qua* appellant Sikkan.

10. The learned counsel for the appellant and the additional public prosecutor for the State have been heard. It is noted that the original trial court record has gone missing from the registry, rendered not traceable. However, the record has been re-constructed and it is fairly conceded by both sides that the appeal can be decided on its basis.

11. PW-13, mother of the deceased, did not name the appellant Sikkan in her testimony. Her version is primarily based on what she would have learnt from her husband (PW-10) as to how her daughter was being ill-treated in the matrimonial home. Though she would also state that her daughter during her visit had also confided in her about ill-treatment, the statement given by her in this regard is attributed

more to the husband (A-1) Rakesh. PW-3, vaguely stated that *chacha* and *Phoopa* also used to make demands. She would not clarify as to which particular individuals were the said relatives. The vague statement attributing certain acts of commission collectively to the persons accused cannot be accepted as good evidence to prove the complicity of the appellant.

12. On the other hand, PW-10 did speak about the role of the appellant Sikkan as the mediator. He spoke about his daughter having told him that the *stridhan* articles had been kept by the appellant and the other mediator Samay. This cannot be accepted since if true the same would have found some echo in the other evidence. He would not even specify as to which part of *stridhan* was kept by whom. General vague statements being attributed to two persons whose inter-connection is not even brought out cannot be acted upon.

13. PW-10, the father of the deceased, also spoke generally that his daughter was tortured at the instance of the appellant. It is not clarified as to how and on what occasion or in what context or, for that matter, with what objective the appellant would instigate the close relatives in the matrimonial home to torture the deceased. Reference to certain exchanges about *laddoos* (sweets) is too petty to be treated as an instigation leading to torture of the victim for dowry.

14. In the above facts and circumstances, this Court finds it unsafe to confirm the finding of guilty against the appellant on the sole word of PW-10 to the above affect.

15. Consequently, the appeal is allowed. The impugned judgment and order on sentence to the extent thereby the appellant was held guilty, convicted and sentenced are hereby set aside.

R.K.GAUBA, J.

APRIL 01, 2019/nk

